REMARKS

Favorable consideration and allowance are requested for claims 1-3, 6-8,

32, 33, and 37 in view of the following remarks.

Status of the Application

Claims 1-3, 6-8, 32, 33, and 37 are pending in this application. Claims 1-3,

6-8, 32, 33, and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable

by Odom *et al.*, Cisco VoIP Call Admission Control (the "Odom reference") in

view of U.S. Patent No. 6,388,990 to Wetzel (the "Wetzel patent"). Claims 24-27,

29-31, and 34-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable

over Odom reference in view of U.S. Patent No. 6,697,378 to Patel (the "Patel

patent"). Claim 28 was rejected under 35 U.S.C. § 103(a) as being unpatentable

over Odom reference in view of the Patel patent, and further in view of Wetzel

patent. Claims 4, 5, and 9-23 were previously canceled. Claims 24-31 and 34-36

are canceled by way of this amendment. Claim 1 has been amended

Rejection under 35 U.S.C. § 103(a)

According to the outstanding Office Action, the combination of the Odom

reference and the Wetzel patent renders obvious the subject matter of claims 1-3,

6-8, 32, 33, and 37. Applicants respectfully submit that the pending claims are

patentable in light of the amendment to claim 1 and the comments set forth

below.

In particular, Applicants respectfully submit that there is no disclosure in

the Wetzel patent of any process for deciding whether a call is admitted.

Although Wetzel discloses a training process that can establish a maximum data rate available ("TRMAX"), that training process is not ever used as a factor in making a decision about call admission. Call admission is a decision process that runs before every single call can be initiated and provides a decision as to whether each call goes ahead.

In addition, the maximum training rate, as disclosed in the Wetzel patent, establishes a ceiling, *i.e.*, an upper data rate, for transmissions from one piece of equipment to another across a physical connection. It is generally determined by physical capacity and environment of the connection, including factors such as crosstalk, these being physically inherent in the connection. In the Wetzel patent, the training rate can be modified for instance to avoid a mismatch between data rates that might be carried by a DSL connection and those available in a network that the DSL connection is going to use. This is described in the abstract of the Wetzel patent as follows:

> According to a preferred embodiment, DSL terminal units are directed to train at a rate that is not substantially greater than the subscribed data rate, thereby avoiding network congestion due to data rate mismatches between the DSL connection and a corresponding permanent virtual circuit (PVC) channel through the connection-oriented packet network.

In the Wetzel patent, the training rate can also be used as a factor in marketing services to the owner of the DSL connection where the subscribed data rate (the data rate actually paid for) is considerably lower than the rate the DSL connection could physically carry. However, it is still not used to decide, in any one case, whether a call will go ahead or be abandoned.

The abstract of the Wetzel patent also makes it clear there is no connection between the "maximum trainable data rate" and "actual client traffic usage patterns". These are both pieces of data collected and compared in embodiments of Wetzel for management purposes, as follows:

> According to another preferred embodiment, the DSL units are directed to test for the maximum trainable data rate before settling to the subscribed data rate, and to communicate this information to a network operations center computer, thereby allowing the maximum allowable DSL data rate to be compared to actual client traffic usage patterns and to the client's subscribed data rate.

The present invention discloses that a burst of trial data is sent before every single call because it covers a method of call admission. Every call across a network has to go through a call admission process. The present invention is also limited to trial data being sent from a first node, this first node also being the equipment that carries out the comparison to determine the call admission, and the equipment from which the call is initiated.

The Office Action acknowledges that the Odom reference does not disclose a burst of trial data being transmitted "at a higher data rate than the packets to be transmitted on initiation of the continuous stream of data"; instead, it relies on the Wetzel patent because it discloses an arrangement in which a line is tested at a higher data rate than the subscribed data rate. However, the Wetzel patent is directed to testing the line for provisioning purposes, which would normally be done much less frequently than call admission and is not used in any determining process at a "first node." The first node is the equipment that determines whether transmission can be initiated at all and from which the call

is to be initiated. It would be possible to use a training regime according to the

Wetzel patent, but one would not arrive at or even near an embodiment of the

present invention.

The Wetzel patent is directed to provisioning. Training data might be

used in provisioning at the time of line or service installation and in any

circumstances that would make the training data out of date. For example, in c

column 10, lines 49-56, the Wetzel patent addressed TRMAX:

> It may be greater, equal to, or less than its theoretical or historical values
> for any of a variety of reasons, such as rerouting of copper facilities by the
> telephone company, or the deactivation of an unrelated T1 circuit that lies
> in the same copper bundle as the DSL copper pair (thus reducing crosstalk
> and increasing DSL bandwidth).

Even if these physical changes were made before every single call from a

piece of equipment (a first node), and training data had to be re-sent, it is not

being used in a decision-making process at that first node at all, in a call

admission process or otherwise, but is implemented by the DSL Access

Multiplexer 234 (*see* Wetzel patent at col. 8, lines 27-40 for example, relating to

Step 306) and sent to a Network Operations Center ("NOC").

The Office Action refers to Figure 6 in the Wetzel patent and paraphrases

the description at column 11, lines 35-55, as disclosing the routine employment

of the training operation "when establishing a connection between the subscriber

and the service provider". As discussed above, this passage is not directed to

connections (that is, pathways through a network over which individual calls

take place) but refers to "allowing service to begin" and to detecting "whether the

DSL link has been interrupted or reset". This is service installation and updating, not something that occurs on a per call basis. Once a service is installed, the customer can initiate a whole series of calls using the service. Even if this passage were discussing anything on a per call basis, the "first node" from where a call is to be initiated is entirely passive. Nothing is described as being carried out at the "first node" but by the DSL Access Multiplexer 534 under control of the Network Operations Center (NOC) 502. For example, see lines 44-48:

> However, if the DSL Access Multiplexer 534 has reset, it is instructed at step 606 to test for the maximum DSL training rate TRMAX possible as of the time of the retraining, and the provisioning steps 608-622 are repeated.

For at least these reasons Applicants respectfully submit that the pending claims are patentable over the Odom reference and the Wetzel patent.

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If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as

a petition for an Extension of Time sufficient to effect a timely response, and

please charge any deficiency in fees or credit any overpayments to Deposit

Account No. 05-1323 (Docket #038665.56184US).

Respectfully submitted,

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